

EX PARTE OR LATE FILED

**WILLKIE FARR & GALLAGHER**

Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20036-3384  
202 328 8000

Direct: 202 429 4757  
Fax: 202 887 8979  
sblumenfeld@willkie.com

Sue D. Blumenfeld

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

April 28, 1999

**EX PARTE**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, SW  
Washington, DC 20554

Re: CC Docket No. 98-141

Dear Ms. Salas:

On behalf of Sprint Communication Company, L.P., I am herewith submitting this filing in connection with the Commission's efforts to explore conditions that might ameliorate the harm to competition that would result from the proposed merger of SBC and Ameritech. While Sprint continues to have substantial doubt that any condition could substantially reduce or eliminate the predictable, unambiguously anticompetitive result of the merger, the attached is submitted in an effort to assist the Commission by detailing some key areas of concern which must be addressed prior to considering approval of the application.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,



Sue D. Blumenfeld

cc: Robert Atkinson  
William Dever  
Jake Jennings  
Michael Pryor  
Tom Krattenmaker

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List A B C D E

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*Proposed Language:*

Promotion of Competitive xDSL Services. Each ILEC (defined as the operating companies of the merging companies) shall make available to requesting carriers electronic access on a daily basis to a Loop Inventory Database as provided herein. The Loop Inventory Database shall be the exclusive repository of such information within the ILEC (or any affiliate of the ILEC) and any affiliate or division of the ILEC desiring to have access to such information shall access such information exclusively through the database, on the same terms and conditions as requesting CLECs. Two weeks prior to closing, each ILEC shall demonstrate to the Commission that it has established the Loop Inventory Database, and that it contains all relevant data (as set forth below) in the ILEC's possession (including in the possession of any affiliate of the ILEC), *provided* that the data contained in the Database shall reflect the inventory of loops connected to central offices serving not less than 50% of that ILEC's exchange access lines. No later than six months after the closing, the database shall reflect an inventory of loops connected to all of the remaining central offices. The database shall permit the real-time retrieval of both location specific loop capability information and aggregate market information. Location specific loop capability shall include: actual loop length (as measured from customer premise to serving central office); the presence of load coils, bridged taps, and repeaters (and how many of each); the presence of any other known interferers; whether the location currently is served by

facilities that transit through a digital loop concentrator (DLC); the availability of alternate facilities that could circumvent the DLC, i.e., end-to-end copper loop; and any known binder group restrictions that would hinder the placement of a particular xDSL technology. Aggregate market information shall include: average loop length of all loops connected to a specific central office; the percentage of loops that are less than 6,000, 12,000 and 18,000 feet; the percentage of loops currently residing behind a DLC; and the percentage of loops that contain interferers such as load coils, bridged taps and repeaters.

In any central office where the ILEC (or any of its regulated or unregulated affiliates) has begun to offer xDSL services, then for all loops served by that central office, the ILEC shall make available the xDSL network elements (including all DSL functionalities such as DSLAMs) on a combined basis as a UNE-Platform. This obligation is in addition to and independent of the obligation of the ILEC to make individual UNEs available or its obligation to make its xDSL retail services available at a wholesale discount.

*Rationale:* The merger will reduce the incentives of the ILECs to cooperate, will enlarge the parties' ability to discriminate, and impair regulators' ability to regulate, most especially in the area of new services that require new forms of cooperation. This threat comes at a particularly critical time, given the recognized evolution to data-oriented technologies, the growth of the Internet, and the congressional goal of widespread deployment

of advanced broadband services. In order to ameliorate the predictable, adverse consequences of the merger in this area, more definite obligations are needed to promote the competitive deployment of advanced broadband services.

The proposed language will help in two areas. First, by requiring each ILEC to inventory its loops for DSL-capabilities, competitors will have access to better information allowing their deployment and marketing plans to be made upon more accurate data. This will make unbundled loops more readily available to CLECs in order to bring advanced services to customers more quickly and more efficiently. Second, by making the DSL UNE-P available to competitors, consumers will have a greater array of choices of services based upon xDSL technologies.

*Proposed Language:*

Access to Unbundled Network Elements. Prior to closing and pending the FCC's decision on remand from *AT&T Corp. v. Iowa Utilities Board*, until such rules have become Final<sup>1</sup>, each incumbent local exchange company or ILEC (defined as the operating companies of the merging parties) shall offer and provide access to each of the unbundled network elements ("UNEs")

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<sup>1</sup> "Final" as used here shall mean rules, orders or decisions which are not reversed, stayed, set aside, annulled or suspended and with respect to which no timely-filed requests for administrative or judicial review are pending and as to which the time for filing any such requests, or for the FCC to reconsider on its own motion, has expired.

identified in 47 C.F.R. § 51.319. Such access shall be made in accordance with the rules as promulgated in *Local Competition Order*, CC Dkt.96-98, and reinstated by the Supreme Court.

*Rationale:* Opponents have expressed concern that the merger will reduce the incentives of the ILECs to cooperate, will enlarge the parties' ability to discriminate, and impair regulators' ability to regulate. The Supreme Court's decision, while reinstating some clarity, has also put into doubt the UNE obligations of the ILECs pending the remand decision by the FCC and subsequent appellate proceedings. In apparent recognition of the uncertainties attaching during the transition to final FCC rules, the FCC sought voluntary assurances of the largest ILECs of UNE availability. The proposed language takes the "best practice" among these responses (U S West and Ameritech agreed to provide such UNEs during the remand period) and extends them to the merged entity.

*Proposed language:*

UNE-P. Each ILEC shall provide unrestricted availability of combinations of such UNEs, including the UNE-Platform or UNE-P without any non-recurring charges, sunset period (other than as stated herein), "glue" charge," or geographic restrictions, consistent with 47 C.F.R. § 51.315, *AT&T Corp. v. Iowa Utilities Board* and other applicable law. As used herein, the UNE-Platform or UNE-P means access to the combination of UNEs necessary to provide a telecommunications service at the total element long-run economic cost (TELRIC) of such UNEs.

*Rationale:* This provision is similarly derived from the uncertain obligations of the ILECs pending the remand. In recognition that the merger will increase the incentives of the ILECs to exploit this uncertainty, the proposed condition will require the provision of UNE-P without extraneous charges.

*Proposed language:*

Non-Recurring Charges: For any service, element, UNE-P or other product provided to a CLEC for which there is a retail analog, no ILEC will assess any non-recurring charge (e.g., line conditioning charges, service order charges) on CLECs unless that ILEC assesses its own retail customers the same charge subject to an approved tariff.

*Rationale:* The merging parties have relied heavily upon concepts of parity as a regulatory tool to ensure reasonable cooperation from the ILECs. This proposed condition applies this parity concept to a specific condition, i.e., non-recurring charges. This is especially important since both SBC and Ameritech have tried to assess exorbitant line conditioning charges to CLECs.

*Proposed Language:*

Tariff Restrictions

No ILEC (as defined) shall attempt to restrict the type of traffic (local, interstate or intrastate) carried over special access facilities which are provided pursuant to the ILEC's interstate tariff so long as 10% or more of the traffic is interstate.

*Rationale:* Opponents have demonstrated the predictable increased incentives and abilities of the merged entity to raise its rivals' costs. This anticompetitive effect can take many forms, including the attempt to impose upon CLECs output restrictions when using ILEC inputs. SBC has advised CLECs that it intends to prohibit the use of its special access facilities (e.g., those used for Broadband Metropolitan Area Networks) for intrastate and local traffic. This position is not only inconsistent with the FCC's 10% rule, it also would delay competitive entry and raise costs since SBC has no state tariff analog for these services.

*Proposed Language:*

Operations Support Systems:

1) SBC-Ameritech must demonstrate that each of its ILECs provides uniform OSS interfaces for carriers purchasing interconnection. Such interfaces must be uniform throughout the joint SBC/Ameritech region and must include, where applicable, all industry standards (including OBF guidelines), both GUI and EDI based interfaces where no industry standard applies, and uniformity among all related formats, including data fields and business rules;

2) Each of the ILECs must demonstrate through an independent, third-party test that its OSS interfaces are capable of handling the reasonably expected demands for pre-ordering, ordering, provisioning, billing, repair and maintenance with respect to resold services, unbundled network elements, and combinations of unbundled elements. The testing shall follow the

New York PSC independent testing format, as set forth in Case 97-C-0271. Prior to closing, the parties shall submit for the Commission's approval the model contract(s) providing for such testing in each state in the SBC/Ameritech region in accordance with this condition.

3) At least 60 days prior to closing, each ILEC must be in compliance with all reporting, measuring and other requirements set forth in the most current performance measures applicable to SBC in California, as set forth in the Joint Partial Settlement Agreement. Upon the issuance of a Final Order in CC Dkt. 98-56, each ILEC shall report and measure in accordance with such final rules.

*Rationale:* The importance of functioning, uniform OSS interfaces has been fully recognized by the Commission. Because the bigger footprint of the merged entity increases its incentive to not cooperate, and increases its ability to raise its rivals' costs through the continuation of disparate interfaces, it is particularly appropriate to focus on this area in any consideration of conditions. Further, the merging parties have advocated vigorously that discrimination can be detected by reference to "parity" -- only detailed performance measures, such as those adopted in California, will allow the FCC to meaningfully test the "parity" claims of the merging parties.

*Proposed Language:*

Collocation. SBC/Ameritech shall demonstrate, in a submission to the FCC no later than two weeks before closing, with respect to



each of its ILECs, that with respect to each central office where the ILEC or its affiliate is offering broadband advanced services: 1) collocation is being provisioned to non-affiliated CLECs offering broadband advanced services, and 2) it is making available the DSL UNE-platform to CLECs in accordance with this Order.

Each ILEC shall accommodate collocation requests on a first come, first serve basis, including the installation of equipment used in the provision of its (or its affiliate's) own services. An ILEC may reasonably reserve space for equipment used in the provision of its own services, provided that the ILEC makes public through the Internet such reservation and that the reservation is made no more than one year in advance of installation and deployment. The ILEC's collocation practices shall be in full compliance with the FCC's collocation rules and this Order.

SBC/Ameritech shall establish and maintain a formal procedure as further set forth herein designed to determine and ensure on a continuing basis that the ILECs comply in all respects with this Order and the FCC rules when issuing a response to any request for collocation. SBC/Ameritech shall create a Collocation Compliance Committee ("CCC") comprised of at least four senior attorneys designated by and reporting to the General Counsel of SBC/Ameritech. The CCC shall provide legal advice to the management of SBC/Ameritech regarding the ILECs'

compliance with this Order and the FCC rules regarding collocation and the DSL UNE-platform.

In the event that any ILEC makes a "determination," i.e.: 1) determines to deny a request for collocation, defer a request for collocation, or in any respect fail to grant a request for collocation within 60 days of submission, or 2) determines to install, or to allow an affiliate to install, equipment used in the provision of its (or its affiliate's) own advanced broadband services, the ILEC must refer that determination, along with all relevant documentation, to the CCC. The CCC will render a written opinion with regard to the determination within 5 business days of referral. The CCC opinion shall state, at a minimum, an opinion as to the determination's compliance, and provide an explanation of the legal and factual basis for the opinion. The CCC shall not find any determination compliant unless it finds that the ILEC is making available the DSL UNE-P in accordance with this Order.

In the event the CCC finds that any determination is compliant, it shall immediately make such opinion available to the party having requested collocation without restriction. All opinions of the CCC shall be made available for FCC and the respective state PSC inspection at any time.

*Rationale:* It has been demonstrated that the merger will reduce incentives to cooperate, and reduce regulatory effectiveness in monitoring discrimination when it does occur. Collocation is an especially difficult area to regulate, given the central office

by central office nature of the issue, across a variety of issues, including space availability, nonrecurring charges, recurring charges, etc. In order to better ensure enforcement of the Commission's latest rules, insistence upon parity (which the merging parties themselves have insisted upon as a useful regulatory tool) in collocation for advanced services will be necessary.

The condition also utilizes the concept of the Collocation Compliance Committee as a self-enforcing means to promote reasonable and non-discriminatory treatment of collocation requests. It requires SBC/Ameritech to clear internally any potentially discriminatory determination with senior in-house counsel. A similar procedure was utilized in the context of MFJ compliance. *See, e.g., United States v. Western Electric Co.*, 1991-1 Trade Cas. (CCH) ¶69,329 (D.D.C. 1991) (*U S West Enforcement Order*). It thus relies on SBC/Ameritech's internal processes before requiring any governmental intervention.

*Proposed Language:*

Best Practices.

Each ILEC (defined as each operating company of the merging parties) shall make available to any requesting CLEC any term or condition that it (or any of its LEC affiliates) is obligated to provide to a CLEC under an existing interconnection agreement, arbitration decision or other state ruling throughout the SBC region. Such term or condition shall be treated as if it were a

term or condition subject to Section 252(i) obligations, shall be made available within 30 days of the request, and thereafter subject to regulatory approvals, as necessary, pursuant to Sections 251 and 252 of the Act.

*Rationale:* The purpose of this proposed condition is to hold SBC/Ameritech to their promises of "best practices" and to their claims that benchmarking can be used to improve the performance of even commonly owned ILECs. This condition would permit pro-competitive terms and conditions in one SBC interconnection agreement to be elected by CLECs in other states throughout the SBC region without the burdensome process of renegotiating and re-arbitrating in each locale. The proposal is not intended to disturb state authority to review interconnection agreements nor state authority over rates. Thus, by making reference to the procedures of Section 252(i), the state PSC in which the "best practices" provision is being triggered will still have to review the agreement and ensure its consistency with the public interest.

*Proposed language:*

Penalties:

Each ILEC shall be assessed the maximum penalty permitted by law for violating any part of this Order, in addition to any liability for damages.

*Rationale:* Many if not most conditions reiterate existing obligations, and thus fail (or succeed) with the outstanding rules which already applied. One benefit to establishing

conditions is to facilitate enforcement by imposing heavy fines for violations. The proposed condition would forewarn the merging parties that the penalty assessed for non-compliance, with respect to forfeitures to the U.S. Treasury, will be the maximum provided by law. 47 U.S.C. s 503(b)(1), (2)(B). These amounts of course do not include or address in any way damages liabilities under the Communications Act, the antitrust laws or any other remedy available to private plaintiffs.